Town of Derry

"Derry, New Hampshire's Place to Be"

DEPARTMENT OF PUBLIC WORKS,
Michael Fowler, P.E., Director
Thomas A. Carrier, Deputy Director

PW13-241

August 13, 2013

Newton Tedder
US Environmental Protection Agency
5 Post Office Square – Suite 100
Mail Code-OEP06-1
Boston, MA 02109-3912

RE: **Comments – 2013 Draft Municipal Separate Storm Sewer System General Permit**

Dear Mr. Tedder,

The Town of Derry is submitting the attached comments on the Draft 2013 Municipal Separate Storm Sewer System General Permit (MS4GP) for your consideration.

The Town of Derry remains committed to maintaining and improving the environmental health of the town in the interest of the health, safety and welfare of its residents and environment. Our commitment has been demonstrated though development of an environmental program that includes: ensuring compliance of our own operations; outreach to our residents and local businesses to increase public awareness, knowledge, and participation; participation in local educational and watershed organizations; and participation in or attendance at regulatory workgroups, training, and workshops in order to keep apprised of ever-changing regulatory environment.

The Town of Derry appreciates the opportunity to provide these comments. We look forward to working with USEPA to develop a flexible yet proactive stormwater management program that strives toward meeting the intent of the CWA. If you have any questions, please contact Craig Durrett or me at (603) 432-6144

Very truly yours,

Michael A. Fowler, P.E.
Director of Public Works

Cc/att: Craig Durrett, Derry Public Works

/csd

Sections 2.1 and 3.1 of the draft permit includes provisions to ensure discharges from the MS4 do not cause or contribute to an exceedance of water quality standards, in additional to requirements to reduce the discharge to the maximum extent practicable specifically stating that discharges shall not cause or contribute to an exceedance of applicable water quality standards for the receiving water.

- This raises the concern that for many of the impairments, the pollutants of concern are universally present in rain/runoff or groundwater discharge due to natural sources, including mercury, phosphorus, bacteria, and various metals and that mere presence can be interpreted by EPA as contributing to the exceedance or impairment.

- This also implies that regardless of how small a concentration is in the MS4 discharge, the Permittee is considered responsible for causing the impairment. Even though the cause of the impairment may be from a non-MS4 discharger, the liability for the violation of water quality standards rests with the permittee if it "contributes" to a violation but is not "causing" the violation.

- This all inclusive interpretation would create automatic noncompliance and mandate excessive and expensive treatment above and beyond any contribution by the MS4 or private dischargers with little, if any, realized benefit or improvement of water quality.

- The definition for "maximum extent practicable" (MEP) though the draft permit should not imply immediate implementation of a best available technology or be in immediate noncompliance. MEP should be a phased approach through an iterative process.

Section 2.1.2.iii states that there shall be no new or increased discharges from the MS4 to impaired waters unless the permittee demonstrates that there is no net increase in loading from the MS4 to the impaired water of the pollutant(s) for the waterbody is impaired. Does EPA intend to apply this to private entities as well that may discharge through privately owned outfalls for which the permittee has no control?

Section 2.2.1.b Discharges subject to an approved TMDL that specify a wasteload allocation must satisfy the appropriate requirements of Appendix F for Chloride TMDLs. Appendix F specifies that measures to address the TMDL shall include the development of a Salt Reduction Plan that includes specific actions designed to achieve salt reduction on private facilities that drain to the MS4 including requirements for private parking lot and private street owners and operators to use trained and certified commercial salt applicators with reporting of annual salt usage within municipal boundaries. The chloride TMDL and NHDES studies recognize that approximately 50% of the salt imports in the affected watersheds are from the private and commercial sector and obviously contributors to the chloride impairments. The Salt Reduction Workgroup (SRW) made up of representatives from USEPA, FHWA, NHDES, NHDOT and the four affected communities (Derry, Londonderry, Salem, and Windham) have had extensive discussions on approaches to addressing the private/commercial sector. It was generally agreed that regulating and enforcing allocation of the private sector was practically impossible to do. To reiterate concerns expressed previously to USEPA and the SRW, watershed boundaries do not follow municipal boundaries and the majority of commercial salt applicators are transient in that they treat numerous

sites during a deicing event that spans many watersheds and municipalities. For instance, a commercial applicator covers several properties for a major retailer from Derry to Nashua. The SRW has chosen to address the private sector through certification, training, outreach, and state legislative changes at the state regulatory level. Even though the permit allows a permittee to rely on the state programs in compliance with the requirements, establishing local requirements for use of state-certified applicators by the private sector is impossible to enforce.

Section 2.2.1 and Table F-3 states that the Town of Derry is subject to an approved TMDL for Phosphorus at Hood Pond, however the link included in the draft permit directed the reader to the May 2010 draft TMDL on which the Town submitted comments. A Final phosphorus TMDL was not available for review either through USEPA or NHDES websites. Upon further inquiry, the Town became aware of the final TMDL dated May 2012, a copy of which was provided to the Town on April 2, 2013 along with USEPA's approval letter dated June 2012. The draft TMDL was based on a grab sample from 1997 with a concentration of 54 ug/l, however collection of a more recent sample in 2011 prior to the final TMDL report indicated a concentration of 27 ug/l (50% reduction). This is only slightly above the atmospheric deposition concentration calculated for the loading estimate. In EPA's approval of the TMDL, EPA states:

> In this watershed, nonpoint sources of pollution may include diffuse stormwater runoff and overland flow, surface water base flow and groundwater seepage, septic systems, internal cycling of nutrients, waterfowl, and atmospheric deposition. Because there are little available data in this watershed to determine how much of the nonpoint sources are attributable to regulated vs. unregulated sources, DES has chosen to allocate unregulated stormwater and other nonpoint source runoff to the waste load allocation (WLA), which EPA has said is an acceptable approach when insufficient data are available.

This places a more conservative endpoint than what could feasibly be achieved as is emphasized in EPA's approval letter:

> The allocation calls for significant reductions from the major contributing tributary watershed and from direct drainage of between 49 - 76% (TMDL, Section 4.6). DES acknowledges that it is likely that the final allocations, which reduce overall loading by 75% in total, will be challenging to achieve.

The Final TMDL further states that "*successful implementation of this TMDL will be based on compliance with water quality criteria for cyanobacteria scums as well as thresholds for other nutrient related response parameters such as dissolved oxygen and chl a. These water quality variables should be the focus of the VLAP or LLMP. It is recommended that prior to initiating any expensive phosphorus control measures, monitoring should be conducted to confirm that nutrient related water quality violations exist.*" This contrasts with the draft permit requirements to go through the exercise of preparing a phosphorus reduction plan with an aggressive implementation schedule.

The Town of Derry met with NHDES and other MS4 communities to discuss various stormwater issues and TMDLs. Detailed review by NHDES indicated that Hood Pond was erroneously listed in 2006 for cyanobacteria. On July 30, 2013, NHDES released "Impairments Removed From the 303(D) list of Threatened or Impaired Waters" in which it was concluded that Hood Pond should be placed in a Category 2 for cyanobacteria instead of Category 5. The Town of Derry wants to emphasize that even though Hood Pond is removed from the 303(D) list for the identified impairment, the Town will not in any way relax its efforts to improving stormwater quality relative to nutrients within the watershed. In addition, the reduction in phosphorus detected between the 2011 and 1997 sampling events, though data is limited, may be a demonstration of the efforts taken since the implementation of the 2003 MS4 permit. As such, collection of more recent data for all TMDLs and impairments along with continued periodic monitoring may further demonstrate improvements in other impaired waters.

Section 2.2.3 identifies Derry as being within the Great Bay Estuary watershed and therefore subject to preparation of a Water Quality Response Plan. It is important to note that only about 500 acres (or 0.8 square miles) of the town is actually within the watershed. The majority of this area is undeveloped forest, surface water, or bordering wetlands and is upgradient of the Towns of Chester and Sandown, both of which are rumored to have received waivers from the MS4 permit. The Derry's contribution in the watershed is negligible compared to the area within the downstream towns. Given the natural assimilative capacity of the streams within the Derry portion of the watershed, and the downstream segments within the other referenced communities, implementation of any structural BMPs would be a waste of resources.

Section 2.3.4.4 adds unnecessary reporting requirement involving sanitary sewer overflows. Municipalities are already required to report any SSOs under other programs to NHDES and USEPA (CMOM). There is little value to adding the burden of another reporting requirement of the same information to a different program under the same agency. Typically the wastewater departments are separate from those overseeing the town's stormwater program and should not have to be concerned about how many separate entities within EPA to report the same information to. This section also references Appendix B Section B.12 which appears to be more applicable to a NPDES waste water discharges and not relevant to MS4 stormwater discharge. In addition, B.12.F specifies 24 hour reporting for "any noncompliance which may endanger health or the environment. This is a very broad and all inclusive requirement in that any kind of discharge could be deemed to "endanger the environment".

Section 2.3.6.3 requires permittees modify their stormwater ordinance or regulation to require compliance with the NH Stormwater Manual. The Town objects to mandating "compliance" with a specific "manual" in that it is meant to be a reference and are not a statutory regulation and should be removed from the permit. The Town has already included in its ordinance and regulations a reference to industry accepted and state (DES and DOT) Manuals as guidelines for implementing best management practices in the interest of stormwater pollution prevention.

Section 2.3.7.1(d)(ii) requires permittees to routine inspections, cleaning, and maintenance of catch basins such the no sump shall be more than 50% full. This requirement appears to be arbitrary and

without supporting evidence. Existing permittees have a catch basin cleaning program in place that is optimized based on experience, to address which drainage systems need cleaning more often and at what capacity. The sump capacity and need for cleaning is subject to many factors including catchment area, land use within the drainage area, flow rates and volume, and amount of impervious surface. Catch basin sumps and their operation and maintenance are best management practices (BMPs), the specifics of which should not be regulated under the draft permit. The requirement to record the exact volume of material removed from each catch basin is also an unnecessary burdensome task imposed on an already taxed municipality and its contractors that slows down work and increases costs simply to take time to calculate each catch basin's volume of material. Permittees already report total volume removed each year.

Section 2.3.7.2 imposes duplicate requirements already imposed and implemented under USEPA's Multisector General Permit and should be removed from the draft MS4 permit. The Town of Derry already prepared a single SWPPP in accordance with MSGP guidelines and regulations. Although we were not required to, we chose to write one all-inclusive SWPPP that covers our transfer station, waste water treatment plant, highway garage, salt storage facility, vehicle maintenance facility, and septage transfer facility (and septage spill response plan for private haulers) which above and beyond regulatory and permit requirements. In addition, the Town was required under NHDES regulation to prepare a separate Transfer Station Operations Plan which includes duplicate coverage of materials handling relative to overall pollution prevention.